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Supreme Court of the United States

OCTOBER TERM, 1954

No. 821 107

450 ACRES OF LAND, MORE OR LESS, KNOWN AS BARNWELL ISLAND, SITUATE IN CHATHAM COUNTY, GEORGIA, and E. B. PINCKNEY, ET AL., PETITIONERS,

versus

UNITED STATES OF AMERICA ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The petitioners pray that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit, dated and entered in this case on March 22, 1955.

OPINIONS BELOW

The opinions and orders of the District Court (R. 32, 65, 75) are unreported and are printed in the appendix, *infra*, pp. 9-14. The opinion of the Court of Appeals (R. 97) is not yet reported and is printed in the appendix, *infra*, pp. 15-21.

JURISDICTION

The judgment of the Court of Appeals vas entered on the 22nd day of March, 1955. Petition for rehearing (Appendix 21-24) was denied on the 19th day of April, 1955 (R. 115). The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254.

QUESTION PRESENTED

In a condemnation proceeding to determine the jurisdiction of the District Court in which the proceeding is instituted, is evidence that a State of the Union, other than the State in which the District Court is located, assesses taxes on the lands subject to the condemnation proceeding, collects taxes thereon, seizes and sells same for nonpayment of taxes, exercises criminal jurisdiction over said lands and otherwise exercises dominion and control over said lands for a long and continuous period of time, to which the State in which the action is brought acquiesces and does not assert any claim to the said lands, sufficient to warrant the application of the principle of prescription and acquiescence laid down in *Arkansas v. Tennessee*, 310 U. S. 563, and thus support the District Court in holding that it has no jurisdiction over such condemnation proceeding?

STATEMENT

The instant case is a condemnation proceeding instituted by the United States of America in the United States District Court for he Southern District of Georgia to acquire a permanent easement under the power of eminent domain over the lands in controversy. Petitioners, the owners of the lands in question, filed a motion to dismiss the action because the United States District Court for the Southern District of Georgia was without jurisdiction by reason of the fact that the lands which are the subject mat-

ter of the condemnation proceeding are located in the State of South Carolina (R. 7). The District Judge, after hearing the testimony and argument of counsel, in applying the doctrine of prescription and acquiescence, held that the lands in controversy were within the borders of the State of South Carolina, and consequently dismissed the action (R. 32).

Respondent, United States of America, thereafter applied for a new trial on the motion to dismiss, whereupon, upon application, the District Judge permitted respondent, State of Georgia, to intervene as a party in the proceedings (R. 36).

Thereafter, it was agreed between respondent, United States of America, and petitioners that for the purpose of the hearing of the motion for new trial the Court may consider additional evidence agreed upon in lieu of presenting witnesses, such evidence having been submitted to the Court with a stipulation signed by the attorneys for the Government and petitioners (R. 76-86). Upon consideration of the evidence the District Judge dismissed the action (R. 65-70) and denied the motion for new trial (R. 75).

Upon appeal, the Court below reversed the Order of the District Judge and remanded the case to the District Court with directions to proceed with the condemnation proceeding. Petition for rehearing was filed by the petioners (appendix 2*l*.) and denied by the Court below on April 19, 1955.

REASONS FOR GRANTING THE WRIT

1. The decision herein is not in accord with the applicable decisions of this Court:

The decision in the Court below is in direct conflict with the holding by this Court in *Arkansas v. Tennessee*, 310 U. S. 563 that long acquiescence in the assertion of a

particular boundary and the exercise of dominion and sovereignty over the territory within a State, should be accepted as conclusive that such property is within the borders of the State which exercises the dominion and sovereignty.

2. **The evidence of long acquiescence by the State of Georgia of the exercise of dominion and sovereignty by the State of South Carolina over the lands in question warranted the District Court in holding that such lands were within the borders of South Carolina under the principle of prescription and acquiescence:**

The evidence of record shows that the State of South Carolina since 1875 assessed and collected taxes on the lands in question (R. 22, 43, Exhibit B); the State of South Carolina seized and sold the lands in question for the nonpayment of taxes (R. 40); the State of South Carolina exercised criminal jurisdiction over the said lands (R. 81-82); the United States of America, prior to the institution of the condemnation proceeding, negotiated a lease of the said lands in which it recognized them as being in South Carolina (R. 29); the State of Georgia returned to South Carolina for prosecution criminals who committed offenses on the lands in question (R. 41, 82); and the State of Georgia never levied taxes on the said lands nor ever asserted any claim to them prior to its intervention as a party in the condemnation proceeding instituted by the United States of America (R. 103, 104).

On the basis of the foregoing evidence of record the District Court, in applying the doctrine of prescription and acquiescence enunciated in *Arkansas v. Tennessee,* 310 U. S. 563, held that it had no jurisdiction over the condemnation proceeding as the lands in controversy were within the borders of South Carolina.

Therefore, it is respectfully submitted that the Court below, in reversing the District Court and holding that the principle of prescription and acquiescence is not applicable here, violated the rule enunciated by this Court in *Arkansas v. Tennessee,* 310 U. S. 563.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,

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